SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
AUG 3 1971
E. ROBERT SEAVER, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71 - 165

---

JESS RAYMOND BRIDWELL, Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent.

---

# APPENDICES TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

---

Jess Raymond Bridwell, Pro Se

Charles F. Brega, Esquire
2301 First National Bank Building
Denver, Colorado 80202

Of Counsel

LANCEFORD C. BJELLA
CERTIFIED SHORTHAND REPORTER
1307 WESTERN FEDERAL SAVINGS BUILDING

PHONE 266-2355
DENVER, COLORADO 80202

# APPENDIX A

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAY, 1971, TERM

| | |
|---|---|
| UNITED STATES OF AMERICA, Plaintiff-Appellee, v. MICHAEL E. PAULDINO, a/k/a Mike Parker, and JESS RAYMOND BRIDWELL, a/k/a Ray Bradley, Defendants-Appellants. | Nos. 332-70 333-70 |

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
(District Court No. 69-CR-112)

Charles F. Brega, Denver, Colorado, for Appellants.

James A. Clark, Special Assistant United States Attorney, Denver, Colorado, (James L. Treece, United States Attorney, Denver, Colorado) for Appellee.

Before BREITENSTEIN and HILL, United States Circuit Judges, and LANGLEY, United States District Judge.

HILL, Circuit Judge.

Appellants Bridwell and Pauldino were convicted by a jury on an indictment charging them with violating 18 U.S.C. §1952 by traveling in interstate commerce to Nebraska with intent to participate in illegal gambling in the prohibited modes and with actual performance of those acts. Bridwell and Pauldino take this direct appeal from their respective convictions.

In brief, the evidence, taken as we must in the light most favorable to the prosecution, 1/ shows that about November 2, 1966, appellants traveled from Colorado to Nebraska where they were joined by two individuals named Dan Abbott and Roy O'Neal. The group set out to contact one Ray Flanagan, a livestock dealer in Albion, Nebraska. Initially appellants, using alias names, engaged Flanagan in a discussion about buying livestock. Apparently, in no time the conversation turned to rolling dice to see who would buy some liquor so that the group could have a drink together.

There was a dispute in the testimony whether the dice were produced by someone in appellants' group or whether Flanagan had the dice on his desk in the sales barn. At any rate, that one roll of the dice led to a game of craps. Several hours later, Flanagan's wife discovered the game going on in the sales barn and at that point the parties retreated to appellants' motel room to continue shooting craps into the evening. At one point, one of Flanagan's friends joined the game,

---

1/ United States v. Mecham, 422 F.2d 838 (10th Cir. 1970); Collins v. United States, 383 F.2d 296 (10th Cir. 1967).

but upon quickly losing several hundred dollars, he dropped out. Predictably, when the day's activities were totalled up, Flanagan lost some $8,400.

The government also introduced evidence tending to show that appellants were engaged in gambling as a business enterprise and that their trip to Nebraska was made with intent to pursue this activity. In this respect, O'Neal testified for the government to the effect that O'Neal had called Bridwell in Colorado and asked him to come to Nebraska because they "might find some gambling or something." Furthermore, O'Neal stated that Bridwell gave him several hundred dollars of the money won off Flanagan for "calling him [Bridwell] up there."

There was also testimony from an FBI agent about an incident in 1966 wherein Pauldino described himself as a professional gambler. Another agent testified that as far back as 1953 Bridwell claimed that he made his livelihood from gambling. Several other witnesses took the stand to testify about appellants' gambling activities just prior to and after the incident in Nebraska. Their testimony describes a craps game in Nevada in September, 1966, wherein appellants won some $30,000; a blackjack game in an airplane between Seattle and Portland in May, 1966, wherein appellants won some $1,200; and a card game in Canada in November, 1967, where appellant Bridwell, operating alone, won a considerable sum. Finally, as evidence that appellants were engaged in gambling as a business, their respective 1966 income tax returns were entered into evidence because each appellant

had therein described his occupation as "gambler".

Appellants primarily argue on appeal that the evidence was insufficient in three respects to prove a violation of 18 U.S.C. §1952: (1) The evidence did not show a "business enterprise" as the term is defined in the statute; (2) the government failed to establish that appellants traveled interstate with the requisite intent; and (3) the evidence failed to establish that they conducted the unlawful activity in all of the prohibited modes listed conjunctively in the indictment.

On the question of whether there was evidence that appellants were involved in a gambling business enterprise, it must be noted that §1952 makes it a crime to travel interstate to participate in unlawful activities, including gambling, only when those unlawful activities amount to a business enterprise. Obviously the anti-racketeering statute is not aimed at the fellow who, in a single instance, engages in gambling. Rather, the purpose of the statute is to get at those who engage in illegal gambling as a business and who utilize facilities of interstate commerce in furtherance of this business, thereby remaining effectively beyond the reach of state authorities. 2/

As we understand appellants' argument, they contend that under the language of §1952 their activities in Nebraska alone must

---

2/ United States Code, Cong. and Admin. News (1961), pp. 2664-7; see Rewis v. United States, ____ U.S. ____ (1971).

constitute a business enterprise in that state before a violation of the statute occurs. On this premise, appellants take refuge in the fact that the government's evidence only showed that they participated in one gambling incident in Nebraska, that being when they shot craps with Flanagan. Appellants conclude that proof of the lone incident does not show that they were involved in the business of gambling in Nebraska.

The reading of the statute which appellants propose is not supported by the cases they rely upon. In fact, no reported case has come to our attention which is authority directly on the issue posed. However, from the plain words of the statute, it is our determination that the government's evidence in this case was sufficient to prove a business enterprise within the purview of §1952. Representative of the evidence establishing this were appellants' respective tax returns for 1966 which acknowledged gambling as each's occupation. In addition, there was a wealth of undisputed testimony concerning appellants' gambling forays across the country, even extending into Canada. Suffice it to say that it was well established that appellants' trip to Nebraska was not an isolated gambling incident but was just one more roll of the dice in their continuing effort to fleece the lambs of the land. Appellants' gambling was well within the clear meaning of a business enterprise involving gambling as that phrase is used in §1952. 3/

---

3/ Cf. Spinelli v. United States, 382 F.2d 871 at 889 (8th Cir. 1967), rev'd on other grounds, 393 U.S. 410 (1969).